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IN THE UNITED STATES DISTRICT COURT

2009 JUN 22 A 9:10

FOR THE DISTRICT OF SOUTH CAROLINA

Jonny Mae Oliver,

Plaintiff,

vs.

Michael J. Astrue, Commissioner of
Social Security,

Defendant.

C/A No.: 9:08-0886-MBS

OPINION AND ORDER

Plaintiff Jonny Mae Oliver filed an application for supplemental security income on August 12, 2005, alleging disability because of HIV, Bell's palsy, depression, hypertension, hepatitis C, asthma and back problems. The application was denied initially and upon reconsideration. Plaintiff requested a hearing before an administrative law judge ("ALJ"). The ALJ held a hearing on April 30, 2007. On October 12, 2007, the ALJ issued a decision that Plaintiff was not disabled under section 1614(a)(3)(A) of the Social Security Act. On February 8, 2008, the Appeals Council determined that there was no basis for granting Plaintiff's request for review. Plaintiff thereafter brought the within action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the "final decision" of the Commissioner.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for a Report and Recommendation. On June 1, 2009, the Magistrate Judge filed a Report and Recommendation in which he determined that the ALJ had erred in relying on the Medical-Vocational Guidelines to direct a finding of not disabled. The Magistrate Judge recommended that the action be remanded to obtain vocational expert testimony regarding Plaintiff's ability to do sedentary or other work. Accordingly, the Magistrate

Judge recommended that the Commissioner's decision be reversed under sentence four of 42 U.S.C. § 405(g) and the case remanded for further administrative action. No party filed objections to the Report and Recommendation. On June 18, 2009, the Commissioner filed a notice that he would not file objections to the Report and Recommendation.

The court is charged with making a *de novo* determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and the record in this case, the court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly,

It is ORDERED that the Commissioner's decision be reversed pursuant to sentence four of § 405(g) and the case be remanded for further administrative proceedings as set forth herein and in the Report and Recommendation.

IT IS SO ORDERED.

/s/ Margaret B. Seymour

United States District Judge

Columbia, South Carolina

June 19, 2009.